IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3791 of 2004

with

CRIMINAL MISC.APPLICATION No 3793 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

---

RAJUBHAI HATHIBHAI PATEL

Versus

STATE OF GUJARAT

---

Appearance:

1. Criminal Misc.Application No. 3791 and 3793 of 2004

PARTY-IN-PERSON for Petitioner No. 1

MR PD BHATE APP for Respondent No. 1-2

---

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 23/07/2004

C.A.V. JUDGEMENT

1. These repeated applications for bail were received through jail and were argued by the accused as party-in-person. It was submitted by him that the case registered against him has no substance and he is in jail since September 2002 without the trial being proceeded further. It is also submitted through his applications and written submissions that he is a reputed political worker having held several elective offices, he is having permanent establishment with family and has grandchildren as also running business. It is stated that the trial of the case standing against him is delayed due to non-availability of another main co-accused person. It is also submitted that, in the alternative, the trial against him may be ordered to be separated and if it is not completed within 90 days, he may be ordered to be released on the 91st day.

2. The learned A.P.P. strongly objected to the applications and pointed out that several earlier applications for the same purpose were withdrawn. He submitted that the other co-accused person who had been released on bail was absconding and the present petitioner was also likely to be not available for attending the trial. It was submitted, on instructions, that no less than ten F.I.Rs. have been lodged against the petitioner in the last five years and complaints of violence with arms in violation of the Arms Act are registered against him.

3. It was seen from the record that an earlier application of the petitioner was dismissed by a detailed order of the learned Joint District Judge. It was noticed that the petitioner was arrested in connection with the offences registered as C.R.No.108 of 2002 in Vidyanagar Police Station wherein offences punishable under Sections 302, 34 and 120-B of the Indian Penal Code, Section 25 (1) (b) of the Arms Act and Section 135 of the Bombay Police Act were reported. The chargesheet against the petitioner is submitted and the case against him is committed to the Sessions Court. It is the case of the prosecution that an amount of rupees eight lakh was paid through the petitioner for killing a political opponent. The communications and contacts of the petitioner with the other accused persons involved in the offence are revealed during the investigation and a sum of rupees one lakh is recovered from the possession of the petitioner as being part of the payment to be made for killing the victim. Thus, in short, a prima facie

case of involvement in a serious case of murder was made out against the petitioner. Therefore, even though the presence of the petitioner at the scene of the offence does not appear to have been alleged, the prima facie case against the petitioner was established as transpired on perusal of the papers of investigation. In view of the alleged involvement of the petitioner in 14 other criminal cases, including those of attempt to commit murder, grievous hurt and possession of arms, the petitioner has been consistently denied liberty.

4. Except the fact that the trial against the petitioner has not commenced, no other circumstance is pointed out to justify release of the petitioner on bail. In the overall facts and circumstances as briefly narrated hereinabove, it does no appear to be just and proper to exercise the discretion in favour of the petitioner so as to order his release on bail, particularly when the respondent has expressed serious reservations about the behaviour and availability of the petitioner in case he were released on bail. It would, however, be open for the petitioner to make an appropriate application in the trial Court in view of the fact that another co-accused person is stated to be absconding after being released on bail. The applications are accordingly rejected and Rule is discharged.

5. A copy of this order shall be served on the petitioner in jail.

Sd/-

( D.H.Waghela,J.)

(KMG Thilake)